Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	)	
	)	
Applications of	)	
	)	
Comcast Corp.,	)	
Time Warner Cable Inc.,	)	**MB Docket No. 14-57**
Charter Communications, Inc., and	)	
SpinCo	)	
	)	
For Consent To Transfer Control of	)	
Licenses and Authorizations	)	

PETITION TO DENY APPLICATIONS
OF
LINCOLNVILLE NETWORKS, INC., TIDEWATER TELECOM, INC., OXFORD TELEPHONE COMPANY, OXFORD WEST TELEPHONE COMPANY AND UNITEL, INC.

In accordance with the Public Notice issued by the Commission in this proceeding, on July 10, 2014, Lincolnville Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Company, Oxford West Telephone Company, and UniTel, Inc. (the "Maine RLECs") hereby submit this Petition to Deny the Applications filed by Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc., and Spinco (collectively the "Applicants"), unless appropriate conditions, as described herein, are adopted. In support of this Petition, the Maine RLECs state as follows:

I. The Maine RLECs

Each of the Maine RLECs is a "local exchange carrier" under federal law, 47 U.S.C. §153(32), operates as an "incumbent local exchange carrier" as defined by 47 U.S.C. §251(h)(1) ("ILEC") within its respective service territory in Maine, and is a "rural telephone company" as defined by 47 U.S.C. §153(44) ("RLEC"). In addition, each of the Maine RLECs has been designated by the Maine Public Utilities Commission ("MPUC") as an Eligible Telecommunications Carrier ("ETC") pursuant to 47 U.S.C. §214(e), and as such is obligated to provide to subscribers in its service territory the elements of universal telephone service established pursuant to 47 U.S.C. §254(c).

Each of the Maine RLECs is a small local telephone company, located in a rural area of Maine. Under Maine law, each of the Maine RLECs is a telephone utility, 35-A M.R.S.A. §102(19), and each is a provider of provider of last resort ("POLR") service in its respective service area. As a provider of POLR service, each of the Maine RLECs is required to make POLR service available and to maintain its network, ubiquitously within its service area.

The Maine RLECs are among a small and distinct subset of the telecommunications industry in Maine, being locally managed and operated. Their service territories have relatively higher costs to serve compared to non-rural areas of the state. The Maine RLECs have a history of providing landline telephone services to customers in their entire service areas at reasonable and comparable rates due to a combination of their efficient, community-based operations, limited landline competition, and prescribed levels of universal service support from federal and/or state sources. This combination of critical factors allows the Maine RLECs to provide all customers in their service areas with access to excellent telephone and broadband services at rates that are comparable and affordable. Accordingly, the Maine RLECs are presently meeting the overarching purpose of the universal service principles set forth in Section 254(b) of the TelAct, which are to ensure the preservation of a carrier of last resort in rural service territories and that quality telecommunications and informational services are available to all areas, including rural, insular, or high cost areas, at reasonable, comparable and affordable rates.

II. <u>Impact of Cable Based Telephone Competition</u>.

The economic health of the Maine RLECs, their continued ability to meet both their federal universal service obligations and their state POLR obligations, and their continued ability to provide quality telephone and broadband service at reasonable rates, are continually challenged by competition from other telecommunications providers. For several years the Maine RLECs have faced competition consisting largely of inter-modal providers such as wireless carriers and nomadic VOIP. In recent months the RLECs have commenced to be subjected to the more deleterious form of competition by cable telephone service of affiliates of Time Warner Cable Inc. ("TWC"). Because it is reliant on the cable television network, cable telephone competition is geographically limited to core areas of the Maine RLECs' service areas where cable plant exists, which is generally in the areas where customer density is greater. In effect, cable telephone competition selectively serves the Maine RLECs' customers who have a lower cost to serve. As a result, not only do the Maine RLECs lose their more economic customers to TWC, but also the Maine RLECs must continue to serve the less economic customers despite a diminishing net income.

Detailed evidence has been introduced in proceedings before the MPUC, which demonstrates that the introduction of interconnected landline VOIP telephone service, in the Maine RLEC locations where TWC has cable facilities, would cause undue economic burden to the Maine RLECs, and consequently harm the public interest goals of universal service.[1] As explained by the Maine RLECs in those proceedings, the degree of this economic burden is exacerbated by the great disparity between the limited resources of the Maine RLECs and the resources and marketing and advertising capabilities of TWC.

In its February 22, 2013, Order in Docket Nos. 2012-00218-221, the MPUC decided the cases on the basis of the existence of the undue economic burden demonstrated by the Maine RLECs, for purposes of deciding those cases. (Order at p. 9-11.)[2] In its consideration of the

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[1] *Lincolnville Networks, Inc., Tidewater Telecom, Inc. Oxford Telephone Company and Oxford West Telephone Company, Petition for Suspension or Modification of Application of the Requirements of 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(2) regarding Time Warner Cable Information Services (Maine) LLC's Request*, MPUC Docket Nos. 2012-00218-00221; and *UNITEL, Inc., Petition for Suspension or Modification of Application of the Requirements of 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(2) regarding Time Warner Cable Information Services (Maine) LLC's Request*, MPUC Docket No. 2012-198. The Maine RLECs incorporate into this filing, by reference, the record in these proceedings, as publically available on the MPUC's web site at www.maine.gov/mpuc/online/index.shtml.

[2] A decision in Docket No. 2012-00198 was not rendered due to a voluntary dismissal.

potential impacts of the Comcast-TWC Merger on the RLECs and the public interest goals, including universal service, the Commission should also start from the premise of these demonstrations of economic burden. In addition, the Commission should give due recognition to the current state of uncertainty and doubt regarding federal USF support and inter-carrier compensation, which is now further undermining the Maine RLECs' ability to meet cable television competition and to continue to provide universal service.

III. Effects of Comcast/TWC Merger

The consummation of the proposed merger will cause TWC to be part of a cable television empire three times the current size of TWC, in which Comcast is poised to pour additional resources into the TWC operations. (See Comcast-TWC Application, April 8, 2014, p. 2, referencing Comcast's "commitment to invest significantly in the TWC systems.") As a result, TWC will have access to greater resources and have increased competitive power beyond that which has been previously contemplated. As stated in the Application, Comcast and TWC "will compete more effectively against communications … providers with national and global scale." (p. 1.) Direct competition by TWC on such a "national and global scale," including national and global scale marketing, advertising and pricing strategies against the small Maine RLECs will increase the loss of customers in core areas and the economic burden on the Maine RLECs. In turn, the increased economic burden will lead to further weakening of the Maine RLECs' financial health, further diminution of their capacity to sustain universal service, and decreased capacity to invest in telecommunications and broadband network and services.

At the same time, in addition to this increased direct competitive injury resulting from the Merger, the Maine RLECs will also be faced by potential indirect sources of competitive injury. It should be without dispute that any competition between the Maine RLECs and cable telephone service should be between providers who are able to compete on an equal basis, and, for example, not prejudiced by unequal access to other goods and services necessary to compete or by unequal regulatory burdens.

With respect to access to goods and services, it is clear that the Maine RLECs require reasonably priced access to video content in order to compete with TWC's triple play. Yet, the experience of the Maine RLECs has been that video content is very expensive for small providers with little bargaining leverage with the content providers—consequently the service is cost prohibitive. It is apparent that much of the debate regarding the impacts of the Merger involve the issue of Comcast-TWC's dominance over the market for acquisition of video programming. The Maine RLECs do not have the ability to compete fairly with TWC, when TWC is able to obtain video programming at substantially lower pricing. The ability to engage in the provision of triple play service on a parity basis with TWC would not only assure the policy goal of balanced competition, but also would serve to reduce the adverse impact on universal service in the Maine RLECs' service areas caused by TWC's unequal competitive power.

With respect to unequal regulatory burdens, much of the unequal regulatory burden between the Maine RLECs and TWC are a product of state regulatory law. However, as TWC grows greatly in size and competitive power as a result of the Merger, the impact of a regulatory system with unequal burdens is aggravated. Because this increased burden results from the Merger, it becomes important that the disparity in regulatory obligations be mitigated.

Accordingly, the Maine RLECs urge that in its analysis of the proposed Merger, the Commission must give due consideration to the competitive impacts of the Merger, if consummated, on the Maine RLECs (and possibly other similarly situated RLECs) in the TWC cable service areas, and on their ability to provide universal service and other services important to customers such as broadband connectivity.

IV. <u>Standard of Review</u>

The Commission may not approve the Applications in this case unless the Commission finds that the transactions in question will serve "the public interest, convenience, and necessity."[3] In applying the public interest standard the Commission employs a balancing test, in which it weighs any potential public interest harms of the proposed transaction against any potential public interest benefit. *Comcast-NBCUniversal Order* ¶ 22; *Adelphia Order* ¶ 23. In this process, the Applicants bear the burden of proving "by a preponderance of the evidence" that the proposed transaction serves the public interest. *Id*. In addition, in approving a transaction, the Commission may mitigate the potential harms by imposing conditions which are "targeted to ensure that the public interest is served by a transaction" and that the transaction "will yield overall public interest benefits." *Comcast-NBCUniversal Order* ¶ 25; *Adelphia Order* ¶ 26 & 155.

In prior cases involving mergers and acquisitions of cable television companies, the Commission has noted that the public interest to be protected and served encompasses "the broad aims of the Communications Act." *Comcast-NBCUniversal Order* ¶ 24; *Adelphia Order* ¶ 24. The Commission has further noted in these cases that the aims of the Communications Act include enhancing competition and deployment of services to customer, as well as assuring the impact of the transaction on "the quality of communications services". *Id.*

In this case, in which there are potential impacts on providers of rural telephone service and on the preservation of universal service, it must be kept in mind that the public interest to be protected by the Commission under the broad aims of the Communications Act also includes the

[3] 47 U.S.C. §310(d). *See Applications of Comcast Corp., General Elec. & NBCUniversal, Inc. for Consent to Assign Licenses and Transfer of Control of Licenses,* MB Docket No. 10-56, Memorandum Opinion and Order; 26 FCC Rcd. 4238 (2011) ("*Comcast-NBCUniversal Order*") ¶ 22; and *Applications for Consent to the Assignment and/or Transfer of Control of Licenses Adelphia Communications Corporation (and Subsidiaries, Debtors-In-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees, Adelphia Communications Corporation, (and Subsidiaries, Debtors-In-Possession), Assignors and Transferors, to Comcast Corporation (Subsidiaries), Assignees and Transferees,* MB Docket No. 05-1925, Memorandum Opinion and Order, 21 FCC Rcd 8203 (2006) ("*Adelphia Order*") ¶ 23.

preservation of universal service.[4] In fact, the Commission has recently and strongly articulated and reaffirmed the public interest in the preservation of universal service, particularly in rural areas, in its Order of January 30, 2014 in the Technology Transitions Docket, GN Docket No. 13-5 and related dockets:

> Ensuring that all Americans have access to communication services – the value of <u>universal access – is central to our statutory mission</u>. A cornerstone of the Communications Act of 1934 that established the Commission, universal access policies helped to make telephone service ubiquitous throughout the country and accessible by all Americans. The Telecommunication Act of 1996 expanded our universal access mandate to include increased access to both telecommunications and advanced services – such as high-speed Internet – for all consumers at just reasonable and affordable rates. The Act established principles <u>specifically focused on increasing access to evolving services for consumers living in rural and insular areas</u> and for consumers with low incomes … <u>As networks transition, we must protect and promote universal access</u>.

¶ 50-51 (emphasis added). Accordingly, in its decision on whether and in what manner to approve the Merger transactions, the Commission must ensure that universal service in the service areas of the Maine RLECs is protected and promoted.

V. <u>Conditions Are Necessary to Protect Universal Service in the RLEC Service Areas</u>.

The Applicants give less than adequate attention to the universal service issue. They summarily assert that the Merger will produce benefits regarding voice services, stating that the combined company will facilitate "a more robust alternative for voice services." (Application of April 8, 2014, p. 83.) In making this claim, the Applicants ignore that in some places (i.e. the Maine RLECs service areas) increasingly robust and effective competition by an enlarged TWC has the potential effect of harming the goals of universal service. The discussion of potential harms in the Application regarding voice services does not identify or address the potential impact of the Merger on universal service. (See Application p. 138-43.) In fact the term "universal service" does not

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[4] (It would appear that the policy of "universal service" is also reflected in the "quality of communications services" aspect of the public interest referenced in the Commission's Orders in the Comcast-NBCUniversal and Adelphia cases.)

even appear in their Application.[5] As such, the Application has failed to satisfy the burden of proof on this issue regarding one of the most fundamental aims of the Communications Act.

The Maine RLECs urge that the Commission (1) hold the Applicants to their burden of proof on this issue, (2) carefully consider the impact of the Merger transactions on universal service in rural areas and, (3) if the Applications are to be approved, to impose conditions to protect universal service and mitigate the potential harms, including the conditions proposed in this filing. The Maine RLECs believe that a reasonable set of conditions should be designed to ensure the public interest goals of universal service by mitigating the undue economic burden of cable telephone competition in rural areas, to promote broadband availability by protecting the financial health of RLECs so they can invest in its deployment, and to foster equitable competition so that the RLECs can fairly compete.

A. Mitigation of Competitive Harms. The Commission should adopt reasonable conditions to mitigate the adverse economic impacts on the Maine RLECs of the increased competitive advantage and powers of the merged entity. Such mitigation would help assure that the public interest goal of universal service is preserved by allowing RLECs to maintain their financial health so that they can continue to provide universal service and to invest in the facilities necessary to bring state-of-the-art telephone service and broadband connectivity to their customers, while competing on a fair basis with other providers of such services. These purposes can be fostered by the following conditions:

1. TWC would waive access to the enhancement of local number portability ("LNP") in its provisioning of cable telephone service in any RLEC service area in which it was not competing prior to January 1, 2014, for a minimum period of 6 years and until the RLECs have access to video programming on a basis comparable to TWC and the ongoing changes in USF support and intercarrier compensation have been resolved

[5] The term "universal service" appears only once, in footnote 368, in an unrelated reference to "universal service" fund study area.

and adjusted to by the RLECs. This condition would effectively maintain the current status quo in order to allow a period of time for RLECs to plan for the full impact of competition by the merged Comcast-TWC entity, as well as to anticipate and adjust as necessary to coming changes in USF support and inter-carrier compensation. While this does not have all of the mitigation effect of a full suspension of competition, it would temper the competitive impacts on the RLECs, while allowing TWC to compete on a non-LNP basis.[6]

2. Comcast-TWC would be required to sell an individual cable system (on a municipal franchise area basis) to an RLEC serving that area, at a price comparable to the price to be paid by Charter or Spinco for a similar cable system. This condition would enable interested RLECs to compete effectively for the "triple play," by acquiring a video capability, while promoting the objectives of divestiture. (Comcast-TWC would be allowed to adjust the number of systems to be sold to Charter or Spinco to offset for any systems sold to RLECs.)

B. Mitigation of Programming Inequity. The merged Comcast-TWC entity would be required to provide Maine RLECs with access to cable television transmissions received at its local head ends, subject to terms, conditions and costs comparable to those applicable to the local Comcast-TWC providers. This would enable the Maine RLECs to compete on the triple play on a level playing field by assuring programming content is available to RLECs on reasonable and equitable terms.

C. Access to Network Facilities. In recognition that the Merged Entity will have singular control over an expansive and non-duplicable network of facilities essential to the effective and competitive provision of telecommunications services, and that it will have the economic power and

[6] In the proceedings before the MPUC, TWC stated that it would compete in the service areas of the Maine RLECs even if its access to LNP were suspended.

physical assets to dominate smaller local competitors, TWC would be required to make facilities, such as dark fiber, interoffice facilities and fiber to the premise, accessible to competitors on reasonable terms at any technically feasible point and at rates based on TWC's total element long run incremental cost. This condition would provide and offset to the dominant market power of Comcast-TWC and an opportunity for competitors to compete on equitable terms.

VI. Conclusion

For all of the reasons stated herein, the Maine RLECs respectfully request that the Commission deny the Applications unless its approval of the Applications is subject to the conditions described herein, or reasonably comparable conditions.

Respectfully submitted,

Lincolnville Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Company, Oxford West Telephone Company, and UniTel, Inc.

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CERTIFICATE OF SERVICE

I, Joseph G. Donahue, hereby certify that on August 25, 2014, I caused true and correct copies of the foregoing Petition to Deny to be served electronically to the following:

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